



REPUBLIC OF KENYA



Ndiritu v Ngarange (Civil Suit 7 of 2018) [2023] KEHC 21651 (KLR) (1 August 2023) (Ruling)

Neutral citation: [2023] KEHC 21651 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIAMBU
CIVIL SUIT 7 OF 2018
DO CHEPKWONY, J
AUGUST 1, 2023**

BETWEEN

LYDIA NJOKI NDIRITU APPLICANT

AND

MOSES KINYANJUI NGARANGE RESPONDENT

RULING

1. This Ruling is to determine the Notice of Motion Application dated 10th March, 2022. The application seeks the following orders:
 - a. Spent.
 - b. That the Honourable court be pleased to issue an order compelling the Land Registrar Ruiru-Land Registry to remove the caution lodged on land parcel no. Ruiru/Kiu Block 1/415 by Lydia Njoiki Ndirit.
 - c. That costs of this application be borne by the Applicant.
2. The application is supported by the grounds set out on its face and reiterated in the Supporting Affidavit of Moses Kinyanjui Ngarange, the Applicant wherein the Applicant states that the subject land is registered in his name and that the Respondent lodged the caution on the pretext that she was his wife. According to the Applicant, the Respondent had instituted a suit against him which was heard and determined in his favour and thereafter she moved out of the premises a the subject land.
3. He states that since no appeal has been lodged against the decision, the court should order for the removal of the caution to enable him exercise his constitutional right to quiet possession, land use and for him to safeguard his rights.
4. The Applicant sought and obtained court's leave to file a further Affidavit which is sworn on 20th July, 2022 clarifying that the subject land is not Ruiru/KIU Block1/415 as stated in his application but Ruiru/KIU Block 15/170 for which he seeks removal of caution.



5. Both the Application and the Further Affidavit were served upon the Respondent herein and the respective Affidavits of service were filed in court. However, the Respondent has not filed any response to the application.
6. Be that as it may, even though the Respondent has not filed any response to the Application, the court is still called upon to determine the application based on its merits.

Analysis and Determination.

7. From the onset, it is important to establish whether the court has jurisdiction to deal with the application as a first port of call because without jurisdiction the court cannot move a step further but down its tools. This was the court's decision in the classic case of *Owners of the Motor Vessel "Lillian S" -vs- Caltex Oil (Kenya) Ltd* (1989) KLR 1 where the Court stated that: -

“Jurisdiction is everything. Without it, a Court has no power to make one more step. Where a Court has no jurisdiction, there would be no basis for a continuation of proceedings pending other evidence. A Court of Law downs tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction.”

8. It is trite law that jurisdiction of the court flows from either the *Constitution* or a statute or both. This was the decision of the Supreme Court of Kenya in the case of *Samuel Kamau Macharia & Another vs. Kenya Commercial Bank Ltd & 2 others*, Application No. 2 of 2011, where it pronounced that:

“A court's jurisdiction flows from either the *Constitution* or legislation or both. Thus, a court can only exercise jurisdiction as conferred by the *Constitution* or other written law. It cannot arrogate to itself jurisdiction exceeding that which is conferred upon it by law...”

9. On the face of the application, the subject matter is the removal of a caution from the land parcel No.Ruiru/Kiu Block 1/415 by one Lydia Njoki. Clearly, this is a matter relating to land which falls under the purview of the Land and Environment Court that is established under Article 162 of the *Constitution* and not this court as the High Court.

10. Article 165(2) of the *Constitution* provides that the High Court shall not have jurisdiction to deal with matters within the jurisdiction of the Environment and Land Court and the Employment Labour Relations Court.

11. All disputes relating to the Environment and Land are only dealt with by the Environment and Land Court as provided for under Section 13 (2) (e) of the *Environment and Land Court Act* which outlines the jurisdiction of the Environment and Land Courts as follows: -

- (1) ...
- (2) In exercise of its jurisdiction under Article 162 (2)(b) of the *Constitution*, the Court shall have power to hear and determine disputes-
 - a) ...
 - b) ...
 - c) ...;
 - d) ...
 - e) Any other dispute relating to environment and land.



12. Having established that this court does not have jurisdiction to handle the application, herein, it also does not have jurisdiction to transfer the case to the environment and land court. This was the position in the case of *Wamathu Gichoya v Mary Wainoi Magu* [2015] eKLR where the Court held that: -

“... the power to transfer a case to the High Court for hearing may only be exercised if the court before which it is filed is a court vested with competent jurisdiction to try and dispose of the matter. In other words, if the suit filed is incompetent, the High Court lacks jurisdiction to effect a transfer.”

13. In the circumstances, this court finds that the application dated March 10, 2022 has to be dismissed for want of jurisdiction with no orders as to cost.

It is so ordered.

RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT KIAMBU THIS 1ST DAY OF AUGUST , 2023.

D. O. CHEPKWONY

JUDGE

In The Presence Of:

M/S Giteru holding brief for Mr. Gitau for Applicant

Court Assistant - Nancy

